UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,381	08/05/2003	Martin S. Maltz	D/A2290	1288

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EXAMINER
KAU, STEVEN Y

ART UNIT	PAPER NUMBER
2625	

MAIL DATE	DELIVERY MODE
09/18/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/635,381	MALTZ ET AL.
	Examiner	Art Unit	
	STEVEN KAU	2625	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>08 September 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): <u>See Continuation Sheet</u>.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1-22</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Shee</u>.

12. ☐ Note the attached Information *Disclosure* Statement(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

  /David K Moore/
  Supervisory Patent Examiner, Art Unit 2625

          /Steven Kau/
          Examiner, Art Unit 2625

Continuation of 5. Applicant's reply has overcome the following rejection(s): Claims 10-22 rejections under 35 USC 112 first paragraph, and claims 1-8 & 10-22 rejections under 35 USC second paragraph.

Continuation of 11. Applicant's argument, "The obligation of the examiner to go forward and produce reasoning and evidence in support of obviousness is clearly defined at M.P.E.P. §2142:
The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness.
M.P.E.P. §2143 sets out the three basic criteria that a patent examiner must satisfy to establish a prima facie case of obviousness:
1. some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
2. a reasonable expectation of success; and
3. the teaching or suggestion of all the claim limitations by the prior art reference (or references when combined)", Page 9, Remarks, 9/8/2009.

In, re, the examiner has already explained how the application is examined, i.e. see examiner responses to applicant's argument, pages 2-7, Action, Final, 8/26/2008 and pages 4-6, Action, Non-Final, 2/9/2009.

Applicant repeats the same arguments presented in previous remarks, i.e. 5/4/2009 that "The Examiner therefore asserted that it would have been obvious for one skilled in the art to modify Shimizu to include a transformation module for automatically reducing said particular dimensional order based on determining which color value among said plurality of color values has attained said gamut limit, thereby providing improved control for colors that are located external to said gamut, taught by Mahy. The Examiner argued the motivation for doing so would have been to improve the control of an L*a*b* value of a certain color which is outside a target color gamut and hence for better image reproduction quality, and further the mathematical model provided by Mahy 109 could be implemented by one another with predictable results", page 12, Remarks, 9/8/2009.

In re, the examiner has already responded to this assertion, i.e. "In re, the examiner respectfully disagrees the above argument. First, the examiner demonstrated how each claim element is taught and suggested by Shimizu et al '227 in view of Mahy '109 in the Action; and then demonstrated that Mahy's teaching is combinable with Shimizu et al's reference to "improve the control of an L*a*b* of a certain color which is outside a target color gamut, and further the mathematical model provided by Mahy '109 could be implemented by one another with a predictable result", Pages 9-10, Action, Final, 7/29/2009, and "Having a system of Shimizu' 277 reference and then given the well-established teaching of Mahy' 109 reference, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Shimizu' 277 reference to include a transformation module for automatically reducing said particular dimensional order based on determining which color value among said plurality of color values has attained said gamut limit, thereby providing improved control for colors that are located external to said gamut as taught by Mahy' 109 reference. The motivation for doing so would have been to improve the control of an L*a*b* value of a certain color which is outside a target color gamut and hence for better image reproduction quality, and further the mathematical model provided by Mahy' 109 could be implemented by one another with predictable results", Page 16, Action, Final, 7/29/2009.

Applicant continues to present the same argument, "The Examiner again appears to misunderstand the Applicant's argument. The Examiner continues to cite material in the reference that teaches the creation of a color conversion table. The present invention never teaches discusses, considers, describes, or even contemplates a color conversion table in any capacity. The color conversion table does not read on the present invention", Page 12, Remarks, 5/4/2009 and Page 14, Remarks, 9/8/2009.

In re, the examiner has addressed that "applicant is trying to emphasize that Shimizu only teach how to create a conversion table and overlooks that the main scope of Shimizu's disclosure which is 'When an L*a*b* value of a certain color is outside a target color gamut to be converted, it is judged whether the L*a*b* value is located within the range of the color gamut set under a predetermined condition. This set range is a range in which the accuracy is degraded if colors are converted using only a first method, for example, a range in the neighborhood of the color gamut. If a color to be converted is located within the range, colors are converted using a second method. If the L*a*b* value of the color to be converted is outside of the set range, it is converted using the first method until the conversion result is contained within the range Then, the occurrence of both a problem which the first conversion method has for colors in the neighborhood of the color gamut when colors are converted and a problem which the second method has in the conversion of a color far from the color gamut can be suppressed' (Abstract), and creating a conversion table for the purpose of converting, or inversing color outside of color gamut to the boundary of gamut, and therefore, image output device, i.e. a printer or a display can produce an improve quality image reproduction. In addition, the process of creating and using the conversion table demonstrate "wherein said image processing device is under a control of a particular dimensional order" (limitation, of Claim 10)", Pages 7-8, Action, Final, 7/29/2009.

Given that Shimizu et al' 277 reference teaches identical structural and functional elements of the system as claimed in Claim 10, and a mathematic module and a method of how "a transformation module for automatically reducing said particular dimensional order based on determining which color value among said plurality of color values has attained said gamut limit (e.g. Mahy discloses an example mathematical model of 3-ink process with one color value c1 reaches its limit at 0, dimensional order of 3-ink process is automatically reduced to 2-ink process because an n-ink process is completely characterized by its colorant gamut with a number of colorant limitations, col 14, lines 50-64 col 1, lines 49-58), thereby providing improved control for colors that are located external to said gamut (col 7, lines 45-48). And Mahy's teaching is combinable to modify Shimizu et al reference for reducing dimensions. For example, "If the amount of conversion C is 10 or less, it is judged that the point is near to a color gamut boundary, and a point (Ld0, ad0, bd0) in an L*a*b* space is converted to the nearest point on the color gamut boundary on the condition that Ld0=L0, ad0=a0 and bd0=b0 using the closest neighborhood method described earlier in which problem 1 is likely to occur (step S19)" (C01 13, lines 5-15), and by combining Mahy's teaching with Shimizu et al's reference, dimensional order of 3-ink can be reduced to a two-ink process, which, can improve the out of gamut color control process", Pages 15-16, Action, Final, 7/29/2009.

The examiner believes that that the cited references are reasonably and properly meeting the claimed limitations, and the claims rejections are proper